

SCOTT N. SCHOOLS (SCBN 9990)
United States Attorney
BRIAN J. STRETCH (CABN 163973)
Chief, Criminal Division
KIRSTIN M. AULT (CABN 206052)
THOMAS MOORE (ASB 4305-O78T)
Assistant United States Attorneys

450 Golden Gate Ave., Box 36055
San Francisco, CA 94102
Telephone: (415) 436-7151, 6935
Facsimile: (415) 436-7234

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

**UNITED STATES' OPPOSITION TO
DEFENDANTS' MOTIONS IN LIMINE**

19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

	<u>PAGE</u>
BACKGROUND	1
ARGUMENT	3
A. Evidence Regarding Tax Returns in Years Outside of the Indictment Period Is Relevant to Proving the Defendant's Knowing and Willful Failure to Report Income During the Years Charged in the Indictment	3
B. Evidence Regarding Revenue Agent Janet Appleton's Audit of Defendant Chaudhry's Tax Returns is Relevant to His Knowing and Willful Failure to Report Income During the Years Charged in the Indictment	3
C. Evidence Regarding Revenue Agent Appleton's Belief that the Defendants Were Involved in a Computer Theft Ring is Relevant to Explaining the Actions Taken by Appleton During Her Audit.	5
D. Evidence Regarding Defendant Chaudhry's Contribution to Pakistani Charitable and Political Causes Will Not Be Introduced Unless the Defendants Open the Door.	5
E. Evidence That is Inextricably Intertwined With the Conduct Charged in the Indictment Should Be Admitted Under Federal Rules of Evidence 401 and 402 or, Alternatively, under Rule 404(b)	5
1. Legal Background	5
a. Evidence of the acts constituting the same course of conduct or conspiracy are admissible under Rules 401 and 402.	5
b. Evidence of background, context	7
2. Each piece of evidence cited by the defense is admissible under Rules 401, 402, 403 and 404(b).	8
a. Evidence of trade in illegal software.	8
i. inextricably intertwined	8
ii. Rule 404(b)	10
b. Evidence of the amount of defendant Chaudhry's tax deficiency.	12
i. inextricably intertwined	12
ii. Rule 404(b)	12
iii. Rule 403	12

1	c.	Evidence of checks other than those charged in the indictment .	13	
2	i.	inextricably intertwined	13	
3	ii.	Rule 404(b)	13	
4	iii.	Rule 403	14	
5	d.	Evidence of Clarence Walker's compliance review	14	
6	e.	Payments from RT and AES customers other than those charged in the indictment.	14	
7	i.	inextricably intertwined	14	
8	ii.	Rule 404(b)	15	
9		iii.	Rule 403	15
10	f.	Evidence of activity in defendant Chaudhry's bank accounts. .	15	
11	i.	inextricably intertwined	15	
12	ii.	Rule 404(b)	16	
13	iii.	Rule 403	16	
14	g.	Evidence of defendant Chaudhry's participation in preparing CTR's	17	
15	i.	inextricably intertwined	17	
16	ii.	Rule 404(b)	17	
17	iii.	Rule 403	18	
18	h.	Evidence of Relationship between defendant Chaudhry and Sheila Wu and Radu Tomescu.	18	
19	i.	inextricably intertwined	18	
20	ii.	Rule 404(b)	18	
21	iii.	Rule 403	19	
22	iv.	cumulativeness	19	
23	i.	Evidence of the defendants' dealings with check cashers other than those pertaining to transactions charged in the indictment	19	
24	i	inextricably intertwined	19	
25	ii.	Rule 404(b)	20	
26	iii.	Rule 403	20	

1	F.	Testimony That Is Relevant and Based on Witness' Personal Knowledge Should Not Be Excluded.	20
2	G.	The Summary and Expert Testimony of Charles Tonna is Relevant and Appropriate in This Case.	21
3	H.	The Summary and Expert Testimony of Richard Adams is Relevant and Appropriate in This Case	21
4	I.	Impeachment Material Has and Will Be Disclosed	23
5	J.	Jenks Act Disclosures Have Been and Will Continue to Be Made	24
6	CONCLUSION	25	
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

TABLE OF POINTS AND AUTHORITIES

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	CASES	PAGE
	<u>Barsky v. United States,</u> 339 F.2d 180 (9th Cir. 1964)	22
	<u>Cheek v. United States,</u> 498 U.S. 192 (1991)	3
	<u>City of Phoenix v. Com/Systems, Inc.,</u> 706 F.2d 1033 (9th Cir. 1983)	21
	<u>Gariepy v. United States,</u> 189 F.2d 459 (6th Cir. 1951)	4
	<u>Hendricks v. Calderon,</u> 70 F.3d 1032 (9th Cir. 1995)	19
	<u>Sherwin v. United States,</u> 320 F.2d 137 (9th Cir. 1963)	4
	<u>United States v. Ayers,</u> 924 F.2d 1468 (9th Cir. 1991)	4
	<u>United States v. Bailleaux,</u> 685 F.2d 1105 (9th Cir. 1982)	11
	<u>United States v. Baker,</u> 10 F.3d 1374 (9th Cir. 1983)	22
	<u>United States v. Beckman,</u> 298 F.3d 788 (9th Cir. 2002)	6, 8, 9, 10, 11
	<u>United States v. Buchannan,</u> 633 F.2d 423 (5th Cir. 1981)	10
	<u>United States v. Buras,</u> 633 F.2d 1356 (9th Cir. 1980)	4
	<u>United States v. Claiborne,</u> 765 F.2d 784 (9th Cir. 1985)	4
	<u>United States v. Conforte,</u> 624 F.2d 869 (9th Cir. 1980)	4
	<u>United States v. DeSalvo,</u> 41 F.3d 505 (9th Cir. 1994)	8
	<u>United States v. Diggs,</u> 649 F.2d 731 (9th Cir. 1981), <i>overruled on other grounds</i>	8
	<u>United States v. Esser,</u> 520 F.2d 213 (7th Cir. 1975)	22
	<u>United States v. Farris,</u> 517 F.2d 226 (7th Cir. 1975)	4

1	<u>United States v. Greene,</u> 698 F.2d 1364 (9th Cir. 1983)	22
2		
3	<u>United States v. Holovachka,</u> 314 F.2d 345 (7th Cir. 1963)	4
4		
5	<u>United States v. Ives,</u> 609 F.2d 930 (9th Cir. 1980)	19
6		
7	<u>United States v. Jackson,</u> 84 F.3d 1154 (9th Cir. 1996)	8
8		
9	<u>United States v. Johnson,</u> 594 F.2d 1253 (9th Cir. 1979)	21, 22
10		
11	<u>United States v. Kelley,</u> 539 F.2d 1199 (9th Cir. 1976)	4
12		
13	<u>United States v. Kim,</u> 884 F.2d 189 (5th Cir. 1989)	4
14		
15	<u>United States v. King,</u> 200 F.3d 1207 (9th Cir. 1999)	9, 11, 18
16		
17	<u>United States v. Marabelles,</u> 724 F.2d 1374 (9th Cir. 1984)	4
18		
19	<u>United States v. Marchini,</u> 797 F.2d 759 (9th Cir. 1986)	22
20		
21	<u>United States v. McCollum,</u> 802 F.2d 344 (9th Cir. 1986)	23
22		
23	<u>United States v. McConney,</u> 728 F.2d 1195 (9th Cir. 1984)	8
24		
25	<u>United States v. Meyers,</u> 847 F.2d 1408 (9th Cir. 1988)	22
26		
27	<u>United States v. Montgomery,</u> 384 F.3d 1050 (9th Cir. 2004)	13, 15, 20
28		
24	<u>United States v. Moore,</u> 997 F.2d 55 (5th Cir. 1993)	22
25		
26	<u>United States v. Mundi,</u> 892 F.2d 817 (9th Cir. 1989)	13, 15, 20
27		
28	<u>United States v. Murillo,</u> 255 F.3d 1169 (9th Cir. 2002)	22, 23
28	<u>United States v. Pineda-Torres,</u> 287 F.3d 860 (9th Cir. 2002)	22

1	<u>United States v. Pistante</u> , 453 F.2d 412 (9th Cir. 1971)	4
2	<u>United States v. Pomponio</u> , 429 U.S. 10 (1976)	4
3	<u>United States v. Powell</u> , 955 F.2d 1206 (9th Cir. 1992)	3
4	<u>United States v. Ramirez-Jiminez</u> , 967 F.2d 1321 (9th Cir. 1992)	6, 11, 17, 18
5	<u>United States v. Rrapi</u> , 175 F.3d 742 (9th Cir. 1999)	8
6	<u>United States v. Sayakhom</u> , 186 F.3d 928 (9th Cir. 1999)	14, 20
7	<u>United States v. Serang</u> , 156 F.3d 910 (9th Cir. 1998)	15, 18, 20
8	<u>United States v. Smith</u> , 890 F.2d 711 (5th Cir. 1989)	4
9	<u>United States v. Snow</u> , 529 F.2d 224 (9th Cir. 1976)	4
10	<u>United States v. Soulard</u> , 730 F.2d 1292 (9th Cir. 1984)	4
11	<u>United States v. Turk</u> , 722 F.2d 1439 (9th Cir. 1983)	4
12	<u>United States v. Vaandering</u> , 50 F.3d 696 (9th Cir. 1995)	5, 10
13	<u>United States v. Voorhies</u> , 658 F.2d 710 (9th Cir. 1981)	4, 22
14	<u>United States v. Williams</u> , 989 F.2d 1061 (9th Cir. 1993)	6
15	<u>United States v. Wood</u> , 943 F.2d 1048 (9th Cir. 1991)	22
16	<u>United States v. Woodley</u> , 9 F.3d 774 (9th Cir. 1993)	4

FEDERAL STATUTES

26	<u>United States Code (18 U.S.C.)</u>	
27	18 U.S.C. § 3500(b)	24
28		

1 SCOTT N. SCHOOLS (SCBN 9990)
 2 United States Attorney
 2 BRIAN J. STRETCH (CABN 163973)
 Chief, Criminal Division
 3 KIRSTIN M. AULT (CABN 206052)
 THOMAS MOORE (ASB 4305-O78T)
 4 Assistant United States Attorneys

5 450 Golden Gate Ave., Box 36055
 San Francisco, CA 94102
 6 Telephone: (415) 436-7151, 6935
 Facsimile: (415) 436-7234

7 Attorneys for Plaintiff

9
 10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

12 UNITED STATES OF AMERICA,)	No. CR 03-40210 SBA
13 Plaintiff,)	UNITED STATES' OPPOSITION TO
14 v.)	DEFENDANTS' MOTIONS IN LIMINE
15 MOHAMMAD YOUSUF CHAUDHRY,)	Pretrial: September 11, 2007
and)	Trial Date: September 24, 2007
16 ALI H. KHAN,)	Time: 8:30 a.m.
17 Defendants.)	Court: Courtroom No. 3
		Hon. S. Brown
		Armstrong

19 Defendants Chaudhry and Khan have filed numerous motions in limine, most of which
 20 are duplicative. The United States files this consolidated response to both defendants' motions
 21 and respectfully requests that the Court deny the defendants' motions in their entirety as none has
 22 merit based on the law and facts of this case.

23 **BACKGROUND**

24 The United States anticipates that the evidence introduced at trial will show that the
 25 defendants were involved in a conspiracy to structure transactions to avoid financial reporting
 26 requirements and that one of the aims of this conspiracy was to allow defendant Chaudhry to
 27 underreport on his federal tax returns the income from two of his businesses – RT Computers
 28 (“RT”) and Alternative Energy Systems (“AES”). Defendant Kahn was one of defendant

1 Chaudhry's employees who assisted Chaudhry with structuring his business transactions by
2 cashing multiple checks in amounts less than \$10,000. These checks were not cashed at banks
3 but were brought by the defendants to local check cashers. Some of those check cashers were
4 corrupt and agreed with the defendants that they would not file Currency Transaction Reports
5 ("CTR's") with the IRS.¹ Defendant Kahn further helped to cover up Chaudhry's scheme by
6 filing false Currency Transaction Reports ("CTR's") on behalf of RT and AES. Defendant Kahn
7 participated in cashing over 150 checks, and defendant Chaudhry personally cashed many more.
8 Only a representative sample of these checks was charged in the indictment; however, all of the
9 cashed checks were part of the same overall course of conduct.

10 RT and AES were in the business of selling counterfeit or stolen software. The
11 businesses operated by making cash purchases of large pallets of common software such as
12 Microsoft Office. The software was typically stolen or had been designated for a specific use,
13 such as the educational market. Software designated for such specific markets was sold by
14 Microsoft at a discount price. Employees at RT and AES would remove the seals and stickers
15 from the educational-use software and replace them with general-use seals and stickers, enabling
16 RT and AES to sell software that was obtained for the discounted educational-use price to
17 retailers at the increased general-use price. Stolen software was similarly repackaged to appear
18 as if it had been legitimately obtained. In addition to assisting defendant Chaudhry with
19 structuring check cashing to avoid financial reporting requirements, defendant Kahn also
20 participated in delivering the stolen software to RT's and AES' customers.

21 Counsel for defendants Chaudhry and Kahn have indicated that they intend to offer as a
22 defense at trial that RT and AES were not in the business of selling software at all. Rather, they
23 claim that the businesses were check cashing services. As a result, according to the defense, the
24 checks written to RT and AES were not for product, and thus were not "income" to the
25 companies that needed to be reported on the companies' tax returns. Instead, the checks from
26

27 _____
28 ¹ The currency transaction reporting requirement that the defendants sought to
evade by structuring their transactions was the filing of CTR's with the IRS. CTR's must be
filed for all cash transactions over \$10,000.

1 RT's and AES' customers were merely to be cashed by RT and AES, and only the resulting
 2 check cashing fee, which was a fraction of the value of the checks themselves, needed to be
 3 reported on the corporate returns as income. In an effort to bolster this defense, beginning in late
 4 2000, the defendants began filing false CTR's with the IRS claiming that checks that had been
 5 received by RT and AES in 1999 and 2000 for product were actually currency transactions.
 6 While all of these CTR's were filed in defendant Chaudhry's name, handwriting analysis has
 7 determined that several of the CTR's were completed by defendant Kahn.

8 In order to refute this defense, the United States must prove that RT and AES were
 9 actually in the business of selling computer software, not in the business of cashing checks. Part
 10 of this proof will come in the form of testimony regarding the day-to-day operations of RT and
 11 AES as computer software companies. As described above, the daily operations of RT and AES
 12 consisted of the repackaging and selling of illegally obtained computer software. Therefore, the
 13 testimony of witnesses regarding the operations of those companies necessarily must touch on
 14 the illegality of those businesses.

15 In addition, counsel for defendant Kahn has indicated that he intends to offer as a defense
 16 that defendant Kahn was not aware of defendant Chaudhry's illegal business dealings and was
 17 only doing what he was told as an employee of the companies. Evidence of the pervasiveness
 18 and obviousness of defendant Chaudhry's illegal conduct, as well as defendant Kahn's
 19 participation in aspects of that conduct, is necessary to refute this anticipated defense.

20 ARGUMENT

- 21 A. **Evidence Regarding Tax Returns in Years Outside of the Indictment Period Is
 22 Relevant to Proving the Defendant's Knowing and Willful Failure to Report Income
 23 During the Years Charged in the Indictment. (*Chaudhry In Limine #1; Kahn In
 Limine #I.A*)**
- 24 B. **Evidence Regarding Revenue Agent Janet Appleton's Audit of Defendant
 25 Chaudhry's Tax Returns is Relevant to His Knowing and Willful Failure to Report
 Income During the Years Charged in the Indictment. (*Chaudhry In Limine #2; Kahn
 In Limine #I.B*).**

26 In the criminal tax context, willfulness is the "voluntary, intentional violation of a known
 27 legal duty." Cheek v. United States, 498 U.S. 192, 201 (1991); United States v. Powell, 955
 28 F.2d 1206, 1210 (9th Cir. 1992). "Bad purpose" or "evil motive" is not part of the equation.

1 **United States v. Pomponio**, 429 U.S. 10, 12 (1976); **United States v. Kelley**, 539 F.2d 1199,
 2 1204 (9th Cir. 1976). Since direct proof of a defendant's state of mind is rarely available,
 3 circumstantial evidence and inferences drawn therefrom typically establish willfulness. **United**
 4 **States v. Woodley**, 9 F.3d 774, 779 (9th Cir. 1993); **United States v. Claiborne**, 765 F.2d 784,
 5 797 (9th Cir. 1985); **United States v. Conforte**, 624 F.2d 869, 875 (9th Cir. 1980).

6 Examples of circumstantial evidence that are admissible to show willfulness include:

7 A consistent pattern of underreporting large amounts of income. **United States v. Kim**,
 8 884 F.2d 189, 192 (5th Cir. 1989).

9 False statements to agents, whether made by defendant or instigated by him. **United**
States v. Pistante, 453 F.2d 412 (9th Cir. 1971).

10 Repetitious omissions of items of income. **Sherwin v. United States**, 320 F.2d 137, 141
 11 (9th Cir. 1963).

12 Extensive use of cash. See **United States v. Soulard**, 730 F.2d 1292, 1304 (9th Cir.
 13 1984) (affirming jury instruction that the jury may consider extensive use of cash with
 14 respect to intent);

15 The defendant's filing history both before and after the years in question. **United States**
v. Farris, 517 F.2d 226, 229 (7th Cir. 1975) ("no error was committed in admitting the
 16 evidence regarding the years immediately prior to and subsequent to the years at issue");
 17 see also **United States v. Ayers**, 924 F.2d 1468, 1473, 1474 (9th Cir. 1991) (admitting
 18 evidence of subsequent acts in tax evasion and conspiracy case because subsequent acts
 19 occurred in close proximity to offense, i.e. within two years from when defendant was
 20 charged, and were similar to conduct which led to charge of conspiracy); **United States v.**
Turk, 722 F.2d 1439, 1441 (9th Cir. 1983) (*en banc*) (failure to file income tax returns in
 21 two prior years was admissible to show intent); **United States v. Voorhies**, 658 F.2d 710,
 22 715 (9th Cir. 1981) (in tax evasion case, ruling that defendant's subsequent conduct "had
 23 the 'likely effect' of misleading and concealing" and was therefore probative of
 24 defendant's willfulness); **United States v. Buras**, 633 F.2d 1356, 1359 (9th Cir. 1980)
 25 (holding that defendant's filing of tax returns for eight years prior to years in question
 26 illustrated that defendant understood his legal obligation to file returns and was therefore
 27 admissible for purposes of proving willfulness); **United States v. Snow**, 529 F.2d 224,
 28 225 (9th Cir. 1976) (*per curiam*) (defendant's failure to file income tax returns in six
 29 years preceding years in question was probative of defendant's willfulness).

30 The absence or destruction of documents supporting the information in the tax return.
 31 See **United States v. Holovachka**, 314 F.2d 345, 358 (7th Cir. 1963) (the defendant's
 32 "statement that the records disclosing the source of this substantial amount of currency
 33 were lost. . . . was a factor to be considered by the jury on the issue of willfulness.");
 34 **Gariepy v. United States**, 189 F.2d 459, 463 (6th Cir. 1951) (evidence of destruction of
 35 pertinent books and records is relevant to willfulness).

36 The Defendant's professional experience. See **United States v. Smith**, 890 F.2d 711,
 37 715 (5th Cir. 1989) ("taxpayer's acumen as an entrepreneur" is relevant to willfulness).

38 The filing of a false return. **United States v. Marabelles**, 724 F.2d 1374, 1380 (9th Cir.
 39 1984). **Model Jury Instructions for the Ninth Circuit**, 8.26.2 (1997 Edition-West
 40 Publishing Company).

1 **C. Evidence Regarding Revenue Agent Appleton's Belief that the Defendants Were
2 Involved in a Computer Theft Ring is Relevant to Explaining the Actions Taken by
3 Appleton During Her Audit. (*Chaudhry In Limine #3*).**

4 **D. Evidence Regarding Defendant Chaudhry's Contribution to Pakistani Charitable
5 and Political Causes Will Not Be Introduced Unless the Defendants Open the Door.
6 (*Chaudhry In Limine #4*).**

7 At this time, the United States does not intend to introduce, in its case in chief, evidence
8 of Agent Appleton's belief that the defendants were involved in a computer theft ring or of
9 Chaudhry's contributions to Pakistani charitable and political causes. However, should the
10 defense open the door to this evidence, such as by introducing evidence of the defendant's good
11 character or attempting to explain certain actions as an effort to assist underprivileged groups or
12 charities, the United States may seek to introduce evidence pertinent to any issues raised by the
13 defense. See United States v. Vaandering, 50 F.3d 696, 704 (9th Cir. 1995).

14 **E. Evidence That is Inextricably Intertwined With the Conduct Charged in the
15 Indictment Should Be Admitted Under Federal Rules of Evidence 401 and 402 or,
16 Alternatively, under Rule 404(b). (*Chaudhry In Limine #5; Kahn In Limine #I.C*)**

17 Defendants Chaudhry and Kahn seek to exclude evidence that is not expressly charged in
18 the substantive counts of the indictment. However, because the challenged evidence is part of
19 the same course of conduct as the offenses charged in the indictment, it is inextricably
20 intertwined with the charged conduct and is therefore admissible under Federal Rules of
21 Evidence 401 and 402. Where such conduct is part of the conspiracy charged in the indictment,
22 evidence concerning it is direct evidence of the conspiracy, even if the acts themselves are not
23 listed as "overt acts" in the indictment itself. Even if such evidence were not admissible as direct
24 evidence of the crimes charged in the indictment under Rules 401 and 402, such evidence is
25 admissible under Rule 404(b) as evidence of motive, opportunity, plan, intent knowledge, and
26 lack of mistake or accident.

27 1. Legal Background

28 a. Evidence of the acts constituting the same course of conduct or conspiracy
29 are admissible under Rules 401 and 402.

30 Where evidence is admitted as part of the same course of criminal conduct or to provide
31 background or context for the crimes charged in the indictment, it is analyzed for admissibility

1 under Federal Rules of Evidence 401 and 402, and not under Rule 404(b). As the Ninth Circuit
 2 has repeatedly held:

3 “[e]vidence should *not* be treated as ‘other crimes’ evidence when
 ‘the evidence concerning the [‘other’] act and the evidence
 concerning the crime charged are inextricably intertwined’”
 [citations omitted]. In such cases, the policies supporting the
 exclusion of evidence under Rule 404(b) are inapplicable, since the
 evidence is not being presented to “prove the character of a person
 in order to show action in conformity therewith.” Fed. R. Evid.
 404(b). Instead, the evidence is “direct evidence,” used to flesh
 out the circumstances surrounding the crime with which the
 defendant has been charged, thereby allowing the jury to make
 sense of the testimony in its proper context.

9 **United States v. Ramirez-Jiminez**, 967 F.2d 1321, 1327 (9th Cir. 1992). This is particularly
 10 true where the purported “other acts” are part of the same course of criminal conduct, only parts
 of which were charged as substantive counts of an indictment. See **United States v. Williams**,
 12 989 F.2d 1061, 1070 (9th Cir. 1993) (“The policies underlying rule 404(b) are inapplicable when
 13 offenses committed as part of a single criminal episode become other acts simply because the
 14 defendant is indicted for less than all of his actions ”) (internal quotations and citations omitted).
 15 Uncharged conduct is admissible outside the structures of Rule 404(b) where “(1) particular acts
 16 of the defendant are part of ... a single criminal transaction, or when (2) other act evidence ... is
 17 necessary [to admit] in order to permit the prosecutor to offer a coherent and comprehensible
 18 story regarding the commission of the crime.” See **United States v. Beckman**, 298 F.3d 788,
 19 794 (9th Cir. 2002) (internal citations omitted).

20 In **Williams**, 989 F.2d at 1070, the Ninth Circuit held that uncharged cocaine
 21 transactions, which a witness testified occurred contemporaneously with the charged crimes of
 22 possession of distribution amounts of methamphetamine [“crank”] and marijuana, are not “other
 23 crimes” evidence under Rule 404(b) because “they were linked to and essentially part of the same
 24 conduct as the crank sales.” The “testimony regarding uncharged conduct was inextricable from
 25 and provided necessary context for [the witness’] testimony about the charged conduct. Even if
 26 portions of [the] testimony could be categorized as ‘other crimes’ evidence, the district court
 27 would not have abused its discretion in admitting it.” *Id.*

28 //

If the rules were otherwise, the government would be forced to bring indictments consisting of hundreds of counts for every continuing crime that was executed through multiple instances of particular conduct. Instead, the rules allow the government to charge a representative sample of particular illegal instances but to apprise the jury at trial of the entire background and scope of the criminal scheme. As the court held in United States v. Gonzalez, the “trial court may admit evidence that does not directly establish an element of the offense charged, in order to provide background for the events alleged in the indictment. Background evidence may be admitted to show, for example, the circumstances surrounding the events or to furnish an explanation of the understanding or intent with which certain acts were performed.” 110 F.3d 936, 941 (2d Cir. 1997) (citations omitted). Thus, “evidence of uncharged criminal activity is not considered ‘other crimes’ evidence under Fed.R.Evid. 404[b] if it ‘arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial.’” *Id.* at 942 (citations omitted). Similarly, evidence of uncharged criminal activity is not considered “other crimes” evidence if it explains the defendant’s intent or knowledge concerning the charged crimes. See United States v. Kallin, 50 F.3d 689, 696 (9th Cir. 1995) (evidence of the defendant’s filing of false corporate tax returns not charged in the indictment properly admitted to show defendant’s intent to file false personal tax returns as charged in the indictment).

b. Evidence of background, context, and similar instances of misconduct are admissible under Rule 404(b).

Even if the evidence were not admissible as inextricably intertwined with the charged conduct, it is admissible if it meets the requirements of Rule 404(b). The Ninth Circuit applies a four-part test to determine the admissibility of evidence under Rule 404(b): (1) there must be a sufficient degree of evidence for the jury to find that the other acts were in fact committed; (2) the other acts evidence may only be introduced to prove a material issue in the case; (3) the other acts must not be too remote in time to the conduct charged; and (4) the other acts must be sufficiently similar to the charged conduct when they are being introduced to show intent.

1 **United States v. DeSalvo**, 41 F.3d 505, 509 (9th Cir. 1994).

2 Rule 404(b) is a rule of “inclusion,” and “unless the evidence of other crimes tends only
 3 to prove propensity, it is admissible.” **United States v. Rrapi**, 175 F.3d 742, 748 (9th Cir. 1999),
 4 quoting **United States v. Jackson**, 84 F.3d 1154, 1159 (9th Cir. 1996); **United States v. Diggs**,
 5 649 F.2d 731, 737 (9th Cir. 1981) (“This circuit has adopted the position that Rule 404(b) is an
 6 inclusionary rul i.e., evidence of other crimes is inadmissible under this rule only when it proves
 7 nothing but the defendant’s criminal propensities.”), *overruled on other grounds*, **United States**
 8 **v. McConney**, 728 F.2d 1195 (9th Cir. 1984); **see also** **DeSalvo**, 41 F.3d at 509 (Rule 404(b) is a
 9 rule of “inclusion”).

10 Where, as here, the evidence is part of a single criminal course of conduct, it should be
 11 admitted under Rule 404(b). See **Diggs**, 649 F.2d at 737 (holding that evidence of uncharged
 12 acts that were part of the same scheme to defraud was probative of the defendant’s specific intent
 13 to defraud); **Beckman**, 288 F.3d at 794.

14 2. Each piece of evidence cited by the defense is admissible under Rules 401, 402,
 15 403 and 404(b).

16 Each piece of evidence cited by the defendants is admissible under Rules 401 and 402
 17 because it is inextricably intertwined with the offenses charged in the indictment. Even if it were
 18 not, the evidence is admissible under Rule 404(b) as evidence of motive, opportunity, plan,
 19 intent, knowledge, and absence of mistake or accident.

20 a. Evidence of trade in illegal software.

21 i. inextricably intertwined

22 The defendants’ motion to exclude evidence of their trade in illegal software is essentially
 23 a motion to exclude the entire background and context in which the crimes charged in the
 24 indictment occurred, and it should be denied. The indictment charges tax and structuring
 25 violations based on actions the defendants took as part of RT’s and AES’ illegal trade in
 26 counterfeit and stolen computer software. One of the primary motivations and impetuses for
 27 committing the crimes charged in the indictment was to hide the illegal activities of these two
 28 companies. Excluding evidence of the business in which the companies was engaged would

1 deny the jury the background, context, and motivation for committing the charged crimes. In
 2 addition, many of the United States' witnesses were partners in or victims of the defendants'
 3 illicit sales activities, and evidence concerning the context in which they were doing business
 4 with the defendants is necessary to explain both their relationship to the defendants and the
 5 actions and events that will be described by their testimony. No rule of evidence requires or
 6 encourages the exclusion of such evidence. *See Beckman*, 298 F.3d at 793-94 (evidence
 7 necessary to provide a "coherent and comprehensive story," to explain the relationship between
 8 witnesses and the defendant, and to refute the defendant's claim of lack of intent and knowledge
 9 is "inextricably intertwined" with charged conduct and is admissible as direct evidence, not
 10 subject to Rule 404(b) analysis).

11 As discussed above, the business of RT Computers and AES was to obtain common
 12 software packages such as Microsoft Office either illegally or with markings that indicated the
 13 software was only to be sold to a particular type of customer, such as teachers or educational
 14 institutions. The software intended for a particular market was priced lower than software
 15 designated for general use. RT and AES would then repackaging the stolen or educational-use
 16 software to indicate that it could be sold for general use. In this way, RT and AES were able to
 17 either hide the illegal origins of the software or to obtain software at the discounted prices
 18 intended for educators, but sell the same software at the increased prices intended for regular
 19 consumers.

20 RT's and AES' customers paid for the software using checks. However, instead of
 21 depositing those checks into business accounts, as a legitimate business owner would do, the
 22 defendants converted the checks into cash at check cashing stores in the Bay Area. The cash-
 23 based nature of the business served two purposes: it hid the illegal nature of the underlying
 24 business, and it allowed defendant Chaudhry to underreport the income of his two businesses on
 25 their corporate tax returns. Thus, the illicit nature of RT's and AES' businesses form the
 26 background and context in which the crimes charged in the indictment occurred. See United
 27 States v. King, 200 F.3d 1207, 1215 (9th Cir. 1999) (testimony explaining the general nature of
 28 the defendant's business activity was properly admitted as "direct evidence 'inextricably

1 intertwined' with evidence of the crime charged"). Moreover, the illegal cash-based business
 2 provides the motivation, explains the plan, illuminates the defendants' intent and knowledge, and
 3 explains away any assertion of mistake or accident, for the crimes charged in the indictment. *See*
 4 *Kallin*, 50 F.3d at 696 (evidence of uncharged fraud on corporate tax returns admitted to explain
 5 intent, plan and *modus operandi* of fraud on personal tax returns charged in the indictment).

6 In addition, the evidence is necessary to refute the defenses that have been asserted by
 7 both defendants. Defendant Kahn has stated that he was the innocent employee of defendant
 8 Chaudhry and that he was not aware that any of his conduct was illegal. However, witnesses will
 9 testify to the pervasiveness of illegal conduct at RT and AES, including that the shared
 10 warehouse for these businesses was filled with illegal software and that the practice of
 11 repackaging that software using illicitly obtain stickers and seals was open and notorious. Such
 12 evidence will refute defendant Kahn's assertion that he was unaware of the illegal practices of
 13 RT and AES and that he was simply an innocent employee of defendant Chaudhry. Similarly,
 14 defendant Chaudhry has asserted that he was not in the business of selling computer software but
 15 was instead simply providing a check cashing service for customers in the software industry.
 16 The United States must be permitted to introduce evidence of the true nature of RT's and AES'
 17 business in order to refute this asserted defense. *See United States v. Buchanan*, 633 F.2d
 18 423, 425 (5th Cir. 1981) ("[T]he prosecution is under no obligation to wait and see whether the
 19 defendant argues the non-existence of an element of crime before the prosecution presents
 20 evidence establishing that element.")

21 Evidence of the illicit nature of RT's and AES' software business is admissible under
 22 Rules 401 and 402 as inextricably intertwined with the charged conduct because it provides the
 23 background and context in which that conduct occurred. *See Beckman*, 298 F.3d at 794.
 24 Moreover, such evidence is necessary to refute the asserted defenses of both defendants.

25 ii. Rule 404(b)

26 In addition, the challenged evidence is admissible under Rule 404(b) because it meets the
 27 four requirements for admissibility under that rule: (1) it explains the motive, opportunity, plan,
 28 intent, knowledge, and lack of mistake or accident of the defendants in committing the crimes

1 charged in the indictment; (2) it occurred at the same time as the charged conduct; (3) witnesses
 2 who directly participated in the criminal activity with the defendants will testify regarding their
 3 actions; and (4) both the charged and uncharged conduct are similar in that they relate to the
 4 defendant's intent to defraud either the United States government or the customers and suppliers
 5 of his business.² See Beckman, 298 F.3d at 794; see also United States v. King, 200 F.3d 1207,
 6 1215 (9th Cir. 1999) (evidence of fraudulent schemes sufficiently similar to warrant introduction
 7 under Rule 404(b)).

8 iii. Rule 403

9 Such evidence is also admissible under Rule 403 because it is not unfairly prejudicial to
 10 the defendants. This evidence is not of the character that would prompt the jury to base its
 11 decisions on impermissible factors, such as shock or outrage at the defendants' conduct. See
 12 Ramirez-Jiminez, 967 F.2d at 1327 ("The unfair prejudice is measured by the extent to which
 13 the testimony 'makes conviction more likely because it provokes an emotional response in the
 14 jury or otherwise tends to affect adversely the jury's attitude toward the defendant wholly apart
 15 from its judgment as to his guilt or innocence of the crime charged.'"), quoting United States v.
 16 Bailleaux, 685 F.2d 1105, 1111 (9th Cir. 1982). Rather, it is the type of evidence that will prove
 17 the conduct that is in issue. *See Ramirez-Jiminez*, 967 F.2d at 1327 (evidence not excludable
 18 under Rule 403 where it "is not the sort of conduct which would provoke a strong and unfairly
 19 prejudicial emotional response from the jury. Rather, it is prejudicial only to the extent that it
 20 tends to prove the fact justifying its admission."). In addition, the defendants' asserted defenses
 21 have opened the door to the introduction of the evidence necessary to refute those defenses.
 22 Because evidence of the nature of RT's and AES' business is necessary to explain the context in
 23 which the crimes charged in the indictment occurred and to disprove the defendants' anticipated
 24 defenses, as well as to elucidate the motivations and intent of the defendants, the defendants'

26 ² The last factor of "similarity" is not always necessary. If the Court rules that the
 27 evidence is admissible for some other purpose – to show knowledge for example – then
 28 similarity is not required. *See Ramirez-Jiminez*, 967 F.2d at 1326 ("When offered to prove
 knowledge, however, the prior act need not be similar to the charged act as long as the prior act
 was one which would tend to make the existence of the defendant's knowledge more probable
 than it would be without the evidence.").

1 motion to exclude such evidence should be denied.

2 b. Evidence of the amount of defendant Chaudhry's tax deficiency.

3 i. inextricably intertwined

4 As discussed above, one of the primary motivations for the commission of the crimes
 5 charged in the indictment was for defendant Chaudhry to avoid paying taxes on the income
 6 earned by his businesses RT and AES. The amount of money defendant Chaudhry avoiding
 7 having to pay to the IRS is directly relevant to his motivation and purpose for committing the
 8 charged crime. Thus, this evidence is admissible as inextricably intertwined with the charged
 9 conduct because it forms part of the background and context of that conduct.

10 ii. Rule 404(b)

11 In addition, this evidence also tends to prove the defendants' motivation, plan, intent, and
 12 absence of mistake or accident and is therefore admissible under Rule 404(b). Because the
 13 deficiency is contemporaneous with the charged crimes, it is not remote in time. Evidence of the
 14 deficiency will be provided by one of the United States' expert witness and so satisfies the
 15 sufficiency requirement of Rule 404(b). The conduct leading to the deficiency is the same as the
 16 conduct charged in the indictment. Thus, similarity, to the extent it is required, has been met.
 17 Therefore, even if the evidence were not inextricably intertwined with the charged conduct, it
 18 would be admissible under Rule 404(b).

19 iii. Rule 403

20 The evidence should not be excluded under Rule 403 because the amount of the
 21 deficiency is not so large as to shock the conscience. The evidence is highly probative of the
 22 defendants' motive, intent, and lack of mistake or accident, and the danger that the jury will vote
 23 to convict the defendants based on the size of defendant Chaudhry's tax deficiency, rather than
 24 the defendants' actual conduct, is small. Therefore, the balance weighs in favor of admissibility,
 25 and the defendants' motion to exclude this evidence should be denied.

26 ///

27 ///

28 ///

1 c. Evidence of checks other than those charged in the indictment.

2 i. inextricably intertwined

3 As discussed above, defendants Chaudhry and Kahn were involved in a continuing
 4 scheme to exchange business checks for cash instead of depositing those checks into a business
 5 bank account. The defendants conducted their transactions in such a way to avoid the filing of
 6 CTR's as part of their effort to hide the true income of RT and AES from the IRS. Although
 7 only selected representative checks were charged as substantive counts in the indictment, the
 8 uncharged checks are part of the same criminal course of conduct and thus are inextricably
 9 intertwined with the charged offenses. See United States v. Mundi, 892 F.2d 817, 820 (9th Cir.
 10 1989) (where defendant charged in superseding indictment with scheme to defraud only one
 11 travel agency, evidence concerning ten other travel agencies to which the same scheme extended
 12 was admissible as "inextricably intertwined" with the charged offense, or, in the alternative,
 13 under Rule 404(b) as evidence of intent). Moreover, the checks that are not charged as part of
 14 the substantive counts are still part of the charged conspiracy. See United States v.
 15 Montgomery, 384 F.3d 1050, 1061-62 (9th Cir. 2004) (evidence of 1,006 instances of mail fraud
 16 admissible as "inextricably intertwined" with the single count of conspiracy and nineteen
 17 substantive counts of mail fraud charged in the indictment where each instance comprised part of
 18 the conspiracy). The evidence of the uncharged checks, therefore, is inextricably intertwined
 19 with the charged conduct and should be admitted as direct evidence of the conduct charged in the
 20 indictment.

21 ii. Rule 404(b)

22 This evidence is also admissible under Rule 404(b) as evidence of the defendants' plan,
 23 intent, knowledge, *modus operandi*, and absence of mistake or accident. Each of these issues is
 24 material to the trial. Because the uncharged checks and the charged checks occurred during the
 25 same continuous course of conduct, and in many cases contemporaneously, the uncharged checks
 26 are not too remote in time to the charged conduct. Evidence of the uncharged checks will be
 27 introduced in the form of the checks themselves, meeting the sufficiency requirement of Rule
 28 404(b). And the conduct involving the uncharged checks is identical to the conduct charged in

1 the indictment, satisfying the similarity requirement, to the extent that this requirement applies.

2 Therefore, the uncharged checks also meet the admissibility requirements of Rule 404(b).

3 iii. Rule 403

4 Because the conduct involving the uncharged checks is identical to the conduct involving
 5 the charged checks, the risk of unfair prejudice is minimal. Presenting the jury with additional
 6 instances of the same conduct will not be introducing them to facets of the defendants' character
 7 which evidence of the charged conduct will not already address. On the other hand, the evidence
 8 of the entire scheme is highly probative of the defendants' intent, knowledge, and lack of mistake
 9 or accident. Therefore, the balance weighs in favor of admitting the evidence, and the
 10 defendants' motion to exclude should be denied.

11 d. Evidence of Clarence Walker's compliance review.

12 The compliance file compiled by corrupt Revenue Agent Walker contains multiple
 13 documents of various types. Many of those documents are standard forms that constitute
 14 business or public records under Federal Rule of Evidence 803(6) and (8). As such, they are
 15 admissible under these exceptions to the hearsay rule.

16 To the extent that notations on those documents reflect common practices of IRS revenue
 17 agents that are not unique to Clarence Walker, the United States anticipates that another revenue
 18 agent could explain those common concepts and practices to the jury. Because the defendants
 19 have not identified specific documents they seek to exclude, the United States is unable to
 20 provide a particularized response to this portion of their motion.

21 e. Payments from RT and AES customers other than those charged in the
 22 indictment.

23 i. inextricably intertwined

24 As with the uncharged cashed checks discussed above, payments from RT and AES
 25 customers other than those charged in the indictment form part of the same continuing course of
 26 criminal conduct as that charged in the indictment. Thus, those payments are inextricably
 27 intertwined with the charged conduct and should be admitted under Rules 401 and 402. See
 28 United States v. Sayakhom, 186 F.3d 928, 939 (9th Cir. 1999) (evidence of continuing scheme to

1 defraud involving entity other than that charged in the indictment admissible as “inextricably
 2 intertwined” with charged conduct); see also Montgomery, 384 F.3d at 1061-62; Mundi, 892
 3 F.2d at 820. Moreover, those payments form part of the conspiracy charged in count six of the
 4 indictment. See United States v. Serang, 156 F.3d 910, 915 (9th Cir. 1998) (government not
 5 precluded from introducing evidence relevant to entire conspiracy or scheme “simply because the
 6 defendant is indicted for less than all of his actions.”) (internal quotations and citations omitted).
 7 Therefore, they are admissible as direct evidence of the charged conduct.

8 ii. Rule 404(b)

9 In addition, as with the uncharged checks, the uncharged payments are also admissible
 10 under Rule 404(b) to show intent, knowledge, motive, plan, *modus operandi*, and absence of
 11 mistake or accident. The payments were made during the same course of conduct, and in many
 12 cases contemporaneously, with the charged conduct and so are not remote in time. Evidence of
 13 the payments will be in the form of checks, invoices, and direct testimony from the customers
 14 who made the payments, satisfying the sufficiency requirement of Rule 404(b), and the payments
 15 are identical to the conduct charged in the indictment, satisfying the similarity requirement.
 16 Therefore, the evidence of uncharged payments is also admissible under Rule 404(b).

17 iii. Rule 403

18 As with the evidence of the uncharged checks, the evidence of the uncharged payments
 19 presents the same negative character aspects of the defendants as the charged conduct.
 20 Therefore, introduction of evidence regarding the additional payments presents no new
 21 prejudicial information to the jury, and, therefore the risk of unfair prejudice is minimal.
 22 However, the evidence is highly probative of the defendants’ plan, knowledge, intent, *modus*
 23 *operandi*, and absence of mistake or accident. Therefore, the balance weighs in favor of
 24 admitting the evidence, and the defendants’ motion should be denied.

25 f. Evidence of activity in defendant Chaudhry’s bank accounts.

26 i. inextricably intertwined

27 As discussed above, the defendants were engaged in a continuing course of criminal
 28 conduct, only a portion of which is charged in the indictment. However, the circumstances

1 surrounding the charged conduct are inextricably intertwined with the charged conduct.
2 Therefore, activities occurring in defendant Chaudhry's bank accounts outside of the years
3 charged in the indictment provide background and context that explains the actions that occurred
4 during the charged years as well as the motivations for those actions. For example, the fact that
5 defendant Chaudhry conducted some business through his business bank accounts but not other
6 business tends to prove that the business Chaudhry kept outside of legitimate banking channels
7 was business he intended to hide from government regulators. Thus, showing that for the time
8 period before the charged conduct, the defendant conducted business through a legitimate bank
9 account but then switched to conducting business through illegitimate check cashers tends to
10 show that the defendant was not mistaken in his actions but purposefully and intentionally chose
11 to evade normal business banking procedures and opt for illicit processes that would hide his
12 conduct from the IRS. Thus, this evidence is admissible because it is inextricably intertwined
13 with the charged conduct and is necessary to provide context and explain the course of action
14 underlying the charges in the indictment.

15 ii. Rule 404(b)

16 In addition, this evidence is admissible under Rule 404(b) to show plan, motive, intent,
17 knowledge, and absence of mistake or accident. The uncharged conduct took place
18 contemporaneously with the charged conduct, or shortly before, and will be shown by the
19 introduction of bank records, meeting the sufficiency requirement. The cashing or depositing of
20 checks through the defendant's bank account, as opposed to through check cashers, is similar
21 conduct. Therefore, the requirements of Rule 404(b) are met, and the evidence should not be
22 excluded.

23 iii. Rule 403

24 The danger of unfair prejudice by showing the defendant performing legitimate banking
25 transactions is, at most, minimal, and arguably non-existent. The probative value, however, of
26 demonstrating the defendant's change in behavior from using a legitimate banking system to an
27 illegitimate one, is high. Therefore, the balance weighs in favor of admitting the evidence, and
28 the defendants' motion should be denied.

1 g. Evidence of defendant Chaudhry's participation in preparing CTR's.

2 i. inextricably intertwined

3 The United States intends to introduce evidence that the defendants personally prepared
 4 many of the CTRs filed under defendant Chaudhry's name for checks that were written to RT
 5 and AES by software customers. This evidence is again part of the same course of criminal
 6 conduct as that charged in the indictment. The filing of false CTR's was part of the defendants'
 7 effort to cover up the criminal activities in which they had engaged. The defendants filed these
 8 documents in anticipation of asserting the defense that RT and AES were involved in the
 9 business of check cashing, rather than the business of software sales, so that the income received
 10 from customers did not need to be reported on the corporate tax returns.

11 The filing of the false CTR's was part of the overall plan in which the defendants
 12 engaged to hide the income received by RT and AES from the IRS. Thus, it is inextricably
 13 intertwined with the charged conduct. See Ramirez-Jiminez, 967 F.2d at 1327 (evidence that
 14 defendant lied to government agents was "inextricably intertwined" with charged conduct
 15 because his "statements to the officers came in the course of the conduct with which he was
 16 charged, and were probative of his consciousness that his conduct was illegal"). Moreover, the
 17 defendants' decision to engage in this cover up reflects their consciousness of guilt and thus is
 18 relevant to showing their purpose in structuring the cash transactions. This evidence, therefore,
 19 is inextricably intertwined with the charged conduct and should be admitted as direct evidence of
 20 the defendants' commission of the crimes charged in the indictment.

21 ii. Rule 404(b)

22 In addition, these activities show the defendants' intent, knowledge, plan, and lack of
 23 mistake or accident. Importantly, the fact that the defendants' filled out CTRs themselves shows
 24 that the defendants were fully aware of this reporting requirement and tends to prove that their
 25 actions in structuring checks with check cashers was for the purpose of evading those
 26 requirements. The filling out of the CTR's was either contemporaneous with the charged
 27 conduct or within one year following that conduct. The evidence will be presented through the
 28 CTR's themselves as well as expert testimony regarding handwriting analysis, and, thus,

1 sufficiently shows that the defendants committed the acts. To the extent that similarity is
 2 required, the conduct of lying to the IRS is similar to the fraudulent conduct charged in the
 3 indictment. Thus, this evidence is admissible under Rule 404(b).

4 iii. Rule 403

5 In addition, the evidence should not be excluded under Rule 403 because it is unlikely to
 6 “awaken in the jury an irrational or emotional desire to punish [the defendants], leading the jury
 7 to convict [them] based on [their] character alone. Instead, the main source of prejudice would
 8 come from the jury drawing a permissible inference – namely that [the defendants were]
 9 cognizant of the illegal act [they were] committing, and [were] therefore lying to cover [their]
 10 guilt.” Ramirez-Jiminez, 967 F.2d at 1327-28. The evidence is highly probative of the
 11 defendants’ state of mind and lack of accident or mistake, and the danger of unfair prejudice is
 12 minimal. Therefore, the evidence should be admitted, and the defendants’ motion to exclude it
 13 should be denied.

14 h. Evidence of Relationship between defendant Chaudhry and Sheila Wu and
 15 Radu Tomescu.

16 i. inextricably intertwined

17 Fact witnesses called by the United States, including Adnan Torlak and Leng Kouch, will
 18 testify to their personal knowledge of events relevant to the crimes charged in the indictment.
 19 Such evidence will include the business relationship between defendant Chaudhry and WWS
 20 proprietors Sheila Wu and Radu Tomescu. This testimony provides the context in which the
 21 crimes charged in the indictment took place and is, therefore, inextricably intertwined with the
 22 charged conduct. See King, 200 F.3d at 1215. In addition, such testimony is necessary to refute
 23 the defense that RT and AES were not in the business of cashing checks but were in fact in the
 24 business of selling software. This testimony is also necessary to show the “background and
 25 development of the conspiracy” that is charged in the indictment between the two defendants.
 26 Serang, 156 F.3d at 915.

27 ii. Rule 404(b)

28 This evidence is also admissible under Rule 404(b) because it shows the motivation,
 intent, plan, and absence of mistake or accident on the part of the defendants. The uncharged

1 conduct occurred in the months and years leading up to the charged conduct and continued
 2 contemporaneously with the acts charged in the indictment; therefore, it is not too remote in time.
 3 The uncharged conduct will be introduced through the testimony of witnesses with personal
 4 knowledge of the events and relationships at issue. Therefore, the evidence is admissible under
 5 Rule 404(b).

6 iii. Rule 403

7 The evidence that the defendants participated in frauds other than those charged in the
 8 indictment will be minimally prejudicial as the jury will already have been presented with
 9 evidence that the defendants' lied to defraud the IRS. This evidence, however, is highly
 10 probative of the defendants' actions and is necessary to explain the relationships and events that
 11 will be discussed as part of the charges presented in the indictment. The Rule 403 balance,
 12 therefore, weighs in favor of admitting the evidence, and the defendants' motion should be
 13 denied.

14 iv. cumulativeness

15 This testimony is not cumulative where the witnesses have personal knowledge of events
 16 in which other witnesses did not participate. See United States v. Ives, 609 F.2d 930, 933 (9th
 17 Cir. 1980) ("Cumulative evidence replicates other admitted evidence."). Moreover, the
 18 testimony of corroborating witnesses is not cumulative where, as here, the credibility of some
 19 witnesses, such as those cooperating with the United States, may be challenged. See Hendricks
 20 v. Calderon, 70 F.3d 1032, 1044 (9th Cir. 1995) (defense counsel found ineffective for failing to
 21 introduce corroborating evidence of witnesses whose credibility was subject to attack).

22 i. Evidence of the defendants' dealings with check cashers other than those
 23 pertaining to transactions charged in the indictment.

24 i inextricably intertwined

25 As discussed repeatedly above, the indictment charges only a representative sample of the
 26 illegal conduct engaged in by the defendants as part of a continuing course of criminal conduct.
 27 As the Ninth Circuit has expressly held, other instances of conduct that are part of the same
 28 criminal scheme are admissible as inextricably intertwined with the charged conduct. See

Montgomery, 384 F.3d at 1061-62; Sayakhom, 186 F.3d at 939; Serang, 156 F.3d at 915; Mundi, 892 F.2d at 820. Moreover, testimony from check cashers regarding discussions they had with defendant Chaudhry regarding the currency transaction reporting requirements and his intention to evade those requirements are directly relevant to the defendants' motivation in structuring the currency transactions. Thus, such conversations are necessary to prove an element of the charged conduct: the defendants' purpose in breaking down larger checks into smaller amounts so as to evade the filing of a CTR. Thus, this evidence is admissible as inextricably intertwined conduct.

ii. Rule 404(b)

In addition, such evidence is relevant to showing motive, intent, knowledge, plan, and absence of mistake or accident under Rule 404(b). The transactions at issue occurred either contemporaneously with the charged conduct or within a short time before or after that conduct. The evidence will be introduced in the form of the checks themselves as well as testimony from the check cashers, and the uncharged conduct is identical to that charged in the indictment. Therefore, all the requirements of Rule 404(b) are met and the evidence may be admitted under this alternate ground.

iii. Rule 403

18 As with the evidence of uncharged checks and payments, the evidence of transactions
19 with check cashers other than those presented in the indictment is minimally prejudicial as it
20 does not introduce the jury to any facets of the defendants' characters with which they will not
21 already be familiar. On the other hand, this evidence is highly probative of the entire scope of
22 the conspiracy between the defendants, their plan, their motivations, their intent and knowledge,
23 and their lack of mistake or accident. Therefore, the balance under Rule 403 weighs in favor of
24 admissibility, and the defendants' motion should be denied.

25 F. Testimony That Is Relevant and Based on Witness' Personal Knowledge Should Not Be Excluded. (*Chaudhry In Limine # 6*)

27 The testimony of the four witnesses cited by the defense – Alex Tennis, Mohammed
28 Saleem, Mohammed Nasim, and Jaswant Sra – will be based on those witnesses' personal

1 knowledge and will not be cumulative of other testimony at the trial. Each of these witnesses
 2 participated in conversations with defendant Chaudhry during which Chaudhry made statements
 3 relevant to the crimes charged in the indictment. Because only these witnesses with personal
 4 knowledge of these conversations can testify as to their content, such evidence is not cumulative
 5 of other witnesses' testimony and should not be excluded.

6 Alex Tennis will testify regarding his role as a supplier of illicit software to AES and RT
 7 Computers. His testimony is relevant to the illicit nature of the business as well as defendant
 8 Chaudhry's knowledge and intent. The other three witnesses will testify regarding the
 9 defendant's relationship with Clarence Walker. If the defense does not assert that Clarence
 10 Walker's advice is a defense to the defendants' conduct, then it is likely that this testimony will
 11 not be needed. However, if the defendants seek to raise Walker as a defense, either through
 12 presentation of their own case or through their cross-examination of the United States' witnesses,
 13 the United States will call these witnesses to rebut any assertions or inferences raised by such a
 14 defense.

15 **G. The Summary and Expert Testimony of Charles Tonna is Relevant and
 16 Appropriate in This Case. (*Chaudhry In Limine #7*).**

17 **H. The Summary and Expert Testimony of Richard Adams is Relevant and
 18 Appropriate in This Case. (*Chaudhry In Limine #8*).**

19 Near the end of its case, the United States will call as a tax summary witness, Revenue Agent
 20 Charles Tonna, who is trained in accounting and the computation of tax liabilities. The United
 21 States will also call Special Agent Rick Adams as a currency transaction summary and expert
 22 witness, who is trained in currency transaction reporting requirements and compliance therewith.
 23 These witnesses will provide an analysis of all the witness testimony at trial, the numerous
 24 financial records introduced into evidence and explain the tax consequences of the Government's
 25 evidence in Tonna's case and reporting requirements in Adams' case. Both agents will provide
 26 Rule 1006 summaries of voluminous records related to their particular expertise..

27 The Rule 1006 summaries must summarize information which is voluminous, admissible,
 28 and available for inspection. **City of Phoenix v. Com/Systems, Inc.**, 706 F.2d 1033, 1038 (9th Cir. 1983); **United States v. Johnson**, 594 F.2d 1253, 1255 (9th Cir. 1979). While the

1 underlying documents must be admissible, they need not be admitted at trial. Johnson, 594 F.2d
 2 at 1257, n. 6; United States v. Meyers, 847 F.2d 1408, 1412 (9th Cir. 1988). Such summaries
 3 are admissible evidence. Id.; United States v. Wood, 943 F.2d 1048, 1053 (9th Cir. 1991).

4 The introduction of summary witness testimony and summary schedules has been approved
 5 by the Ninth Circuit in tax cases, United States v. Marchini, 797 F.2d 759, 756-766 (9th Cir.
 6 1986); United States v. Greene, 698 F.2d 1364, 1367 (9th Cir. 1983); Barsky v. United States,
 7 339 F.2d 180 (9th Cir. 1964). “The fact of a tax due and owing may be established by
 8 documentary evidence of tax liability, accompanied by a summary by an expert.” United States
 9 v. Voorhies, 658 F.2d 710, 715 (9th Cir. 1981). A summary witness draws conclusions from the
 10 evidence presented at trial. United States v. Esser, 520 F.2d 213, 217-18 (7th Cir. 1975). A
 11 summary witness may be used to help the jury organize and evaluate evidence which is factually
 12 complex and fragmentally revealed in the testimony of a multitude of witnesses. See United
 13 States v. Baker, 10 F.3d 1374, 1411 (9th Cir. 1983). The summary witness may review the
 14 evidence in a manner that advocates the Government’s theory of the case, and need not give
 15 effect to the contentions of the defendant. Barsky, at 181; United States v. Moore, 997 F.2d 55,
 16 58-59 (5th Cir. 1993). Copies of the summaries may be published to the jury while the expert
 17 testifies concerning them. Id.

18 Defendant also seeks to exclude the expert testimony by IRS Special Agent Rick Adams
 19 (“Adams”) arguing that while testimony regarding the “structure” of criminal organizations is
 20 admissible when a conspiracy is charged, such testimony is inadmissible if the conspiracy
 21 involves a small or simple criminal enterprise instead of large one. Chaudhry Mot. in Limine at
 22 page11; 2-5. Defendant’s reliance on United States v. Pineda-Torres, 287 F.3d 860 (9th
 23 Cir.2002) is unfounded. In Pineda-Torres the Ninth Circuit states that expert testimony
 24 regarding the criminal organization structure is not admissible when the defendant is not charged
 25 with a conspiracy and it does not impose a size of the conspiracy test. Id. at 863, see also United
 26 States v. Murillo, 255 F.3d 1169, 1177 (9th Cir.2002) . Here, because conspiracy was charged,
 27 evidence of how structuring enterprises operate is admissible even under Pineda-Torres. The
 28 Court should also deny defendant’s request as expert testimony is admissible if it will assist the

1 jury in understanding the mode of operation of the defendants. United States v. McCollum, 802
 2 F.2d 344, 346 (9th Cir.1986) (“Expert testimony regarding the typical structure of mail fraud
 3 schemes could help the jury to understand the operation of the scheme and to assess [the
 4 defendant]’s claim of non-involvement.”). Here, the testimony of Special Agent Adams is also
 5 expected to show the modus operandi of a structuring scheme, how they break up transactions to
 6 avoid reporting. Murillo, 255 F.3d at 1178. Accordingly, the agents testimony should be
 7 admitted.

8 The summary schedules, because they will reflect only evidence that is admitted or
 9 admissible at trial, by necessity will not be finalized until shortly before the agent testifies. As
 10 such, final copies of the summary schedules will be provided to the defense shortly before the
 11 agent testifies. However, Revenue Agent Tonna has prepared “draft” schedules reflecting the
 12 evidence the Government anticipates will be admitted. These “draft” schedules, which are
 13 internal Government work papers, are protected from disclosure pursuant to Rule 16(a)(2) of the
 14 Federal Rules of Criminal Procedure. However, in the spirit of discovery, the United States will
 15 provide “draft” schedules to the defendants prior to the pretrial conference.

16 Consequently, the United States believes that the court should admit into evidence the
 17 testimony of the summary witnesses and summary schedules to assist the jury in this case.

18 **I. Impeachment Material Has and Will Be Disclosed. (*Chaudhry In Limine #9*).**

19 The United States has already made a motion with the Court to disclose the Presentence
 20 Investigation Reports (PSRs) of its cooperating witnesses. The Court requested that the United
 21 States obtain consent from those witnesses to disclose their PSRs. The United States has spoken
 22 with counsel for each of the cooperating witnesses, and counsel have no objection to disclosure
 23 of the PSRs to the defense provided that the PSRs are subject to a protective order that they are
 24 only to be used in connection with these proceedings. The United States now requests that the
 25 Court grant its motion and permit it to turn over the PSRs for its cooperating witnesses to the
 26 defense in this matter, subject to an appropriate protective order.

27 The United States has disclosed the plea agreements for each of its cooperating witnesses.
 28 The United States has disclosed Judgment and Conviction documents for witnesses Leng Kouch,

1 Radu Tomescu and Adnan Torlak. The United States has not disclosed the Judgement and
 2 Conviction document for Sheila Wu as that document remains sealed. The United States hereby
 3 requests that the Court order that the Judgement and Conviction document of Sheila Wu be
 4 unsealed for the limited purpose of providing it to the defense in this case subject to the
 5 protective order that it be used only in connection with this matter.

6 The United States has disclosed the IRS's Title 31 Compliance File regarding Edwin Lin.
 7 The United States believes that it has complied with its obligations to disclose impeachment
 8 material for this witness; however, if other materials come to the United States' attention, the
 9 United States will disclose those materials as soon as practicable.

10 The United States has requested a review of each testifying federal law enforcement
 11 agent's personnel file for material subject to disclosure under *Henthorn* and *Brady*. If any such
 12 material is found, the United States will disclose such material to the defense or raise any
 13 relevant issues with the Court.

14 **J. Jenks Act Disclosures Have Been and Will Continue to Be Made.**

15 The United States has disclosed statements of its witnesses that are in its possession. The
 16 United States will continue to interview witnesses and collect evidence up to and through the trial.
 17 This is necessary because as the defense discloses its theories, the United States must gather
 18 additional evidence to refute those theories. In addition, the United States must meet with its
 19 witnesses to prepare for trial. Conversations with those witnesses may yield additional statements
 20 that must be produced to the defense or additional information that the United States must
 21 investigate. Any new statements will be disclosed as soon as practicable; however, statements
 22 collected near or after the pretrial conference obviously cannot be disclosed by that date.

23 The defense is not entitled to receive any such statements until *after* the witnesses have
 24 testified at trial. *See* 18 U.S.C. § 3500(b). Nevertheless, the United States, in an effort to avoid
 25 further continuances, has provided statements well in advance of trial. The United States will
 26 continue to provide any new statements as soon as practicable after reports are drafted. The United
 27 States respectfully requests that the Court deny the defendants' effort to curtail the United States'
 28 pretrial preparation and continuing investigation. The defendants' request has no basis in law and

1 is contrary to professional legal practice, which entails continuing to investigate and prepare for trial
2 until the last piece of evidence has been submitted to the jury.

3 **CONCLUSION**

4 For the foregoing reasons, the United States respectfully requests that the Court deny the
5 defendants' motions in limine in their entirety.

6 Respectfully Submitted,
7

8 SCOTT N. SCHOOLS
United States Attorney

9 _____ /s/ Thomas Moore
10 THOMAS MOORE
11 KIRSTIN M. AULT
Assistant United States Attorneys

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28